

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Richardson	Team: APU	CCRB Case #: 201710449	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/12/2017 7:30 PM	Location of Incident: Brook Street and Jersey Street	Precinct: 120	18 Mo. SOL 6/12/2019	EO SOL 6/12/2019	
Date/Time CV Reported Tue, 12/12/2017 8:05 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/19/2017 12:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Shaw	20841	946241	GANG SI
2. POM Stephen Furno	07578	948028	GANG SI

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Shaw	Force: Police Officer Matthew Shaw pointed his gun at § 87(2)(b)	
B.POM Stephen Furno	Force: Police Officer Stephen Furno pointed his gun at § 87(2)(b)	
C.POM Matthew Shaw	Discourtesy: Police Officer Matthew Shaw spoke discourteously to § 87(2)(b)	
D.POM Matthew Shaw	Abuse: Police Officer Matthew Shaw searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On December 12, 2017, § 87(2)(b) called the IAB Command Center generating IAB Log No. 17-49420, on behalf of her boyfriend § 87(2)(b). This complaint was forwarded to the CCRB on December 19, 2017.

On December 12, 2017, at approximately 7:30pm, at the intersection of Jersey Street and Brook Street, in Staten Island, PO Matthew Shaw and PO Stephen Furno, both assigned to the Staten Island Gang Squad, pointed their guns at § 87(2)(b)'s vehicle (**Allegations A and B; Force, § 87(2)(g)**). PO Shaw stated, "Get the fuck out of the car" to § 87(2)(b) (**Allegation C; Discourtesy; § 87(2)(g)**). Upon § 87(2)(b) exiting his vehicle, he was placed in handcuffs, and PO Shaw searched his vehicle (**Allegation D; Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was then transported to the 120th Precinct stationhouse.

There is no video evidence.

Findings and Recommendations

Allegation A: Force: Police Officer Matthew Shaw pointed his gun at § 87(2)(b)

Allegation B: Force: Police Officer Stephen Furno pointed his gun at § 87(2)(b)

It is undisputed that PO Shaw and PO Furno interacted with § 87(2)(b) at the intersection of Jersey Street and Brook Street, in Staten Island. It is undisputed that when these officers exited their vehicle, they pointed their guns towards § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b) testified that on December 12, 2017, he was driving alone in his vehicle, a 1999 black two door Honda Civic, down Brook Street in Staten Island. § 87(2)(b) acknowledged that his vehicle had window tints that were darker than the legal limit in the state of New York. As he was driving down Brook Street and past Westervelt Avenue, he observed a dark grey Toyota Camry directly behind him. § 87(2)(b) observed this vehicle activate flashing headlights but § 87(2)(b) stated they were white headlights and there were no sirens. § 87(2)(b) explained that it looked like this vehicle was 'high-beaming' him. § 87(2)(b) stated there were no red or blue lights or sirens activated at this point. § 87(2)(b) believed that the driver in the vehicle behind him was just an erratic civilian trying to steal something from his vehicle. § 87(2)(b) did not stop his vehicle at this point, and turned his radio down to hear if there were any sirens. Once § 87(2)(b) did not hear any sirens, he sped off, driving approximately 35-40 mph. § 87(2)(b) confirmed the posted speed limit on Brook Street was 25mph. § 87(2)(b) then immediately heard the vehicle behind him activate its sirens while he was approaching the stop sign at the intersection of Brook Street and Jersey Street. My § 87(2)(b) pulled up to this stop sign on Brook Street, made a right onto Jersey Street and then pulled over at the beginning corner of that block. § 87(2)(b) stated the Toyota Camry parked behind his vehicle at the corner of Brook Street and Jersey Street. § 87(2)(b) observed two officers, identified via the investigation as PO Shaw, and PO Furno, exit their vehicle and approach his vehicle with their guns drawn and pointed at him. PO Shaw approached the driver side and PO Furno approached on the passenger side. § 87(2)(b) was told to exit the vehicle and he complied. PO Shaw and PO Furno then holstered their guns and PO Shaw put § 87(2)(b) into

handcuffs immediately without any struggle, as he was standing outside of his driver side door. (Board Review 01)

§ 87(2)(b) was not present on scene when § 87(2)(b) stopped his vehicle and when PO Shaw and PO Furno approached § 87(2)(b)'s vehicle.

PO Shaw testified that on December 12, 2017, at approximately 7:30pm, while driving on Van Duzer Street in Staten Island, he observed a vehicle with dark window tints that were beyond the legal limit, in that he could not see through these windows. The driver of this vehicle, identified via the investigation as § 87(2)(b) made a left onto Victory Boulevard, and PO Shaw followed him. PO Shaw also observed § 87(2)(b)'s vehicle to have a loud exhaust in that PO Shaw observed the noise from this vehicle to activate parked vehicles' car alarms while traveling on Victory Boulevard. PO Shaw activated the lights and sirens to his vehicle and added that the lights to his vehicle were not red and blue but white 'strobe' lights that were located in the vehicle's head and taillights. When PO Shaw activated the lights and sirens he observed § 87(2)(b)'s vehicle's speed up. PO Shaw stated he is not sure how fast the vehicle went but stated it was above the posted speed limit because he had to drive 55-60mph to catch up to this vehicle. During this time, PO Shaw kept pressing the air horn to his vehicle. On Brook Street between Westervelt Avenue and Jersey Street, § 87(2)(b) pulled over; however when PO Furno exited the vehicle to approach, § 87(2)(b) sped off again. § 87(2)(b) made a right onto Jersey Street and stopped at the corner of Jersey Street and Brook Street, which was approximately 500 feet away from where the vehicle first stopped. During this time PO Shaw's vehicle's lights and sirens were still activated, and his air horn was still being sounded. PO Shaw stopped his vehicle behind § 87(2)(b)'s, at the corner of Jersey Street and Brook Street. PO Shaw and PO Furno both exited their vehicle and approached with their guns pointed at the vehicle. PO Shaw could not see inside of the vehicle because of the dark window tints. PO Shaw stated he was afraid for his safety and nervous because he did not know who was inside the vehicle, how many people were inside the vehicle, if they had any weapons, what they were doing inside the vehicle and what was going to happen when he approached the vehicle. PO Shaw also mentioned the fact that the vehicle sped off and attempted to flee raised his fear of safety and concern because he did not why they fled. PO Shaw stated these were the only reasons as to why his gun was pointed. PO Shaw approached the driver side, but did not recall which side PO Furno approached on. As PO Shaw approached the vehicle, § 87(2)(b) put his hands outside of the driver side window. PO Shaw did not recall exactly when he holstered his gun but stated it was probably when he saw § 87(2)(b)'s hands outside of the vehicle. PO Shaw opened the driver side door, which was already unlocked, and § 87(2)(b) exited the vehicle. PO Shaw put § 87(2)(b) in handcuffs immediately without struggle while standing towards the middle of the vehicle. (Board Review 02)

PO Furno's testimony was consistent with his partner's, PO Shaw, with the following exceptions: when PO Shaw stopped their vehicle behind § 87(2)(b)'s on Jersey Street, PO Shaw and himself exited their vehicle and remained standing at their respective doors with their guns pointed at § 87(2)(b)'s vehicle. Neither PO Furno nor PO Shaw approached § 87(2)(b)'s vehicle at this point. PO Furno stated he pointed his gun at the vehicle because he was in fear for his safety, because the vehicle did not stop when the lights and sirens were activated, and instead fled so that made him believe that possibly a crime was committed prior or was being currently

committed. PO Furno also stated he could not see inside the vehicle, so did not know how many occupants there were or what they were doing inside, or if what they were doing posed a threat. PO Furno added that once the vehicle stopped they did not know what the vehicle was going to do or whether any occupants would come out. PO Furno stated there were no other reasons as to why he was in fear for his safety. As he had his gun pointed towards the vehicle, PO Furno stated, "Let me see your hands. Put your hands out of the car", towards the vehicle. § 87(2)(b) complied and stuck both of his hands outside the driver seat of the vehicle. PO Furno stated that once they saw the occupant's hands they determined that there was no threat, holstered their guns and approached § 87(2)(b)'s vehicle. PO Shaw approached on the driver side and PO Furno on the passenger side to see if anyone else was in the vehicle. PO Furno stated he could not see inside the vehicle as he was approaching this vehicle, and only when he walked around the front windshield which was not tinted could he see there was no one else inside the vehicle. PO Furno then walked to the driver side. § 87(2)(b) exited the vehicle and PO Shaw immediately put § 87(2)(b) in handcuffs. (Board Review 03)

An officer may take appropriate self-protective measures when he lawfully confronts an individual and reasonably believes him to be armed or otherwise dangerous to the officer or others. The usual police response will be to conduct a frisk, patting the individual's clothing in search of a weapon. Where an immediate frisk is not feasible, however, the officer will be justified in approaching the suspect with weapon drawn or at the ready. People v. Finlayson, 76 A.D.2d 670 (Board Review 04) Although no "hard and fast rules" exist for evaluating the conduct of law enforcement officers conducting investigatory stops, it is well settled that an officer, faced with the possibility of danger, has a right to take reasonable steps to protect himself and an obligation to ensure the safety of innocent bystanders, whether or not probable cause to arrest exists. A car-stop situation is especially hazardous and supports the need for additional safeguards. The United States Supreme Court has emphasized that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers. Thus, an officer who decides to draw his gun need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger. United States v. Wallace, 1998 U.S. Dist. LEXIS 10874 (Board Review 05)

Vehicle stops are inherently dangerous. § 87(2)(b) acknowledged that he did not immediately pull over because he did not believe the vehicle behind him belonged to police officers. § 87(2)(b)'s failure to pull over for several blocks, after indicators were made to do so, heightened the officers' sense of danger. Also, not being able to see inside the vehicle due to the dark window tints also raised their level of suspicion and fear for the above mentioned reasons.

§ 87(2)(g)

Allegation C: Discourtesy: Police Officer Matthew Shaw spoke discourteously to § 87(2)(b)

It is undisputed § 87(2)(b) was asked to exit his vehicle upon approach from PO Shaw and PO Furno. What remains in dispute is whether or not PO Shaw stated, “Get the fuck out of the car”, to § 87(2)(b) during this interaction.

§ 87(2)(b) stated PO Shaw approached his vehicle on the driver side and PO Furno approached on the passenger side. When PO Shaw approached near the drive side door, he stated, “Get the fuck out of the car”, one time to him. § 87(2)(b) complied and exited his vehicle. PO Shaw told § 87(2)(b) to turn around and § 87(2)(b) complied. PO Shaw put him in handcuffs with no resistance from § 87(2)(b).

§ 87(2)(b) was not on scene as the officers approached § 87(2)(b)'s vehicle and when § 87(2)(b) exited his vehicle.

When asked if he stated anything during the time he approached § 87(2)(b)'s vehicle or as he got to the driver side door of § 87(2)(b)'s vehicle, PO Shaw didn't recall and added he was probably telling § 87(2)(b) to get out of the car and to put this hands behind his back. PO Shaw was asked if he stated, “Get the fuck out of the car”, to § 87(2)(b) and PO Shaw responded he did not know.

PO Furno never heard PO Shaw state, “Get the fuck out of the car,” to § 87(2)(b) and was never informed of that occurring.

§ 87(2)(b) and the officers provided inconsistent testimonies in regards to this allegation. While § 87(2)(b) alleged PO Shaw stated, “Get the fuck out of the car”, PO Shaw stated he didn't know if he said this. PO Furno stated he did not hear PO Furno state the aforementioned statement.

§ 87(2)(g)

Allegation D: Abuse of Authority: Police Officer Matthew Shaw searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Shaw searched § 87(2)(b)'s vehicle after § 87(2)(b) was outside of his vehicle and handcuffed. § 87(2)(g)

§ 87(2)(b) testified after he was handcuffed he had a brief verbal exchange with the officers consisting of the officers asking why did he run and § 87(2)(b) explaining to them that he did not hear any sirens and since their vehicle's lights were not red and blue he did not know they were police officers. § 87(2)(b) was then walked to the unmarked vehicle and sat in the rear passenger seat. § 87(2)(b) then observed his girlfriend, § 87(2)(b) arrive on scene and speak with the officers about the situation. After this conversation, § 87(2)(b) observed PO

Shaw walk to § 87(2)(b)'s vehicle and observed PO Shaw lean his upper body into the passenger side of the vehicle and look around. § 87(2)(b) could not articulate in what areas PO Shaw looked because he was seated in the police vehicle at this time, which was behind § 87(2)(b)'s vehicle.

§ 87(2)(b) testified that while approaching the intersection of Jersey Street and Brook Street, she observed § 87(2)(b) handcuffed and leaned up against the rear passenger door of an unmarked police vehicle with PO Furno standing next to him. § 87(2)(b) also observed § 87(2)(b)'s vehicle, which was parked in front of the police unmarked vehicle, with the driver seat and passenger seat doors open. § 87(2)(b) observed PO Shaw leaning his upper body inside of the driver side door of § 87(2)(b)'s vehicle looking around. § 87(2)(b) could not articulate which areas PO Shaw searched because she observed this as she was approaching and once she arrived on scene she approached PO Furno to ask what was going on. (Board Review 12)

PO Shaw stated after he handcuffed § 87(2)(b) he asked § 87(2)(b) why he ran to which § 87(2)(b) stated that he didn't know they were officers. PO Shaw then walked § 87(2)(b) to their police vehicle, and placed him in the rear passenger seat. PO Shaw then walked back to § 87(2)(b) vehicle and searched it, in that he looked inside and searched the grabbable areas of the two seats. PO Shaw stated § 87(2)(b)'s vehicle was a two-seater, in that, there was only a driver seat and front passenger seat inside of it. When asked to explain the grabbable areas, PO Shaw stated he searched anywhere in which § 87(2)(b) could have stashed a weapon- around the seats, and in between the seats. PO Shaw stated he only searched the vehicle to make sure there were no weapons in the vehicle. PO Shaw searched the vehicle for approximately five minutes, and did not find any weapons. PO Shaw stated during this time PO Furno was watching § 87(2)(b) by their police vehicle.

PO Furno stated after § 87(2)(b) was handcuffed right next to the driver side door of his vehicle PO Shaw and § 87(2)(b) had a brief verbal exchange addressing why § 87(2)(b) was stopped. As PO Shaw was speaking to § 87(2)(b) PO Furno stated he was just looking around because he didn't know who else was around. PO Shaw then searched § 87(2)(b)'s vehicle, in that, he leaned his body inside the driver side of the vehicle and looked around the driver seat of the vehicle for any weapons. This search happened as § 87(2)(b) was handcuffed, and as he was standing towards the rear of the vehicle as PO Furno was standing near § 87(2)(b) PO Furno observed PO Shaw search the driver seat, under the driver seat and the two sides of the driver seat. PO Furno did not observe PO Shaw search anywhere else. PO Shaw's search yielded negative results for weapons. § 87(2)(b) was then walked to the unmarked police vehicle and put it into the rear passenger seat. PO Furno did not recall by whom.

An officer breaching the plane of the car doorway with his body or is arm to reach inside the vehicle, even if to obtain a better visual of the interior of the car, does constitute a search of that vehicle. There must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search. People v. Hernandez, 238 A.D.2d 131 (Board Review 06). A police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually necessary to protect himself from harm. People v. Torres, 74 N.Y.2d 224 (Board Review 07)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 08)
- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 09)
- PO Shaw has been a member of service for 10 years and has been the subject in six CCRB complaint and 18 allegations, none of which were substantiated. § 87(2)(g)
- PO Furno has been a member of service for nine years and has been the subject in four CCRB complaint and 6 allegations, of which one was substantiated:
 - 201410919 involved one substantiated allegation of a stop against PO Furno. The Board recommended Formalized Training and the NYPD imposed Formalized training.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On March 1, 2018, a request was made determine if a Notice of Claim was filed in regards to this incident. Confirmation from the Office of the New York City Comptroller will be added to the case file upon receipt
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date